



Federal Communications Commission
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Small Entity Compliance Guide

Policies Regarding Mobile Spectrum Holdings

Report and Order
FCC 14-63
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This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the new rules adopted in the above-referenced FCC rulemaking docket(s). This Guide is not intended to replace the rules and, therefore, final authority rests solely with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide may, perhaps, not apply in a particular situation based upon the circumstances, and the FCC retains the discretion to adopt approaches on a case-by-case basis that may differ from this Guide, where appropriate. Any decisions regarding a particular small entity will be based on the statute and regulations.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation; the FCC will consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or to clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

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COMPLIANCE REQUIREMENTS FOR POLICIES REGARDING MOBILE SPECTRUM HOLDINGS

I. OBJECTIVES OF THE PROCEEDING

Under its statutory mandate, the Commission seeks to manage spectrum to promote economic opportunity, competition, innovation, and investment. In the wake of recent industry trends, both in service evolution and market structure, the Commission has revisited its mobile spectrum holdings rules and policies, which are designed to identify and address situations where an increased concentration of spectrum control in the hands of one company or individual – whether through a proposed secondary market transaction or by securing initial licenses (typically in an auction) – could jeopardize the communications-related benefits that come from a competitive marketplace. This *Report and Order*¹ revises the Commission’s mobile spectrum holdings policies in several regards. Among other things, it updates the list of spectrum blocks that the agency considers when applying the “spectrum screen” used to help determine whether a party’s proposed acquisition of additional spectrum licenses warrants further scrutiny for potential negative effects. It determines no longer to use such a spectrum screen to analyze proposed acquisitions of initial licenses by winning bidders in Commission spectrum auctions; the Commission will instead conduct, for each auction, a pre-auction analysis of the spectrum and markets at issue to determine whether it should adopt specific spectrum limits for that auction (thereby addressing competitive concerns at the outset by limiting or precluding auction participation to the extent that the amount of a party’s pre-auction spectrum holdings – combined with potential purchases at auction – would jeopardize competition) with auction specific spectrum limits. For the upcoming Incentive Auction, the *Report and Order* reserves a certain amount of 600 MHz spectrum for non-nationwide providers and other auction bidders holding less than 45 megahertz of below-1-GHz spectrum in the relevant market. These policies are intended to promote consumer choice and competition among multiple service providers by ensuring, for the foreseeable future, that a sufficient number of service providers will have access to the mix of low- and high-band spectrum needed to ensure robust competition in the mobile wireless marketplace. Consistent with the Commission’s statutory mandate, these policies will also promote the efficient and intensive use of scarce spectrum and will help maximize economic opportunity and the deployment of innovative technologies.

II. REGULATIONS AND POLICIES THAT THE COMMISSION ADOPTED OR MODIFIED

For secondary market transactions (that is, proposed assignments or transfers of control of spectrum licenses that have already been awarded), the Commission will continue to use a modified version of the spectrum screen. In general, the screen has been and will continue to be used to help identify for further competitive analysis those local markets where after the proposed transaction an entity would hold one-third or more of the total spectrum suitable and available for the provision of mobile telephony/broadband services. The *Report and Order* adds the following spectrum to that currently included in the initial spectrum screen applied to the Commission’s case-by-case review of secondary market transactions: the 600 MHz band (after conclusion of the Incentive Auction), the AWS-4 band,

¹ <http://www.fcc.gov/document/mobile-spectrum-holdings-report-and-order>.

the AWS-3 band (on a market-by-market basis depending upon the status of Federal incumbent relocation in that band), H Block, additional BRS spectrum, and most of the EBS spectrum. It removes from the spectrum screen the Upper 700 MHz D Block spectrum, as well as 12.5 megahertz of SMR spectrum. While the *Report and Order* does not adopt a separate screen for evaluating the assignment or transfer of below-1-GHz spectrum, it provides that the Commission will consider below-1-GHz spectrum concentration as an enhanced factor in its review of such transactions.

For bidders in spectrum auctions, the *Report and Order* replaces the current application of the spectrum screen in case-by-case analysis of post-auction applications by winning bidders, with a determination in advance of each auction of whether to apply mobile spectrum holdings limits to that auction. For the 600 MHz Incentive Auction, it reserves up to 30 megahertz of spectrum in each market (subject to the results of the reverse and forward auction bidding) for non-nationwide providers and other auction bidders holding less than 45 megahertz of below-1-GHz spectrum in the relevant market. For the upcoming AWS-3 auction, the *Report and Order* determines not to adopt mobile spectrum holdings limits.

In addition, the *Report and Order* adopts certain restrictions on secondary market transactions of 600 MHz licenses:

For a period of six years after initial licensing, no 600 MHz Band license, regardless of whether it is reserved or unreserved, may be transferred, assigned, partitioned, disaggregated, or long term leased to any entity that, after consummation of the transfer, assignment, or leased on a long term basis, would hold an attributable interest in one-third or more of the total suitable and available below-1-GHz spectrum.

For a period of six years after initial licensing, no 600 MHz Band reserved license may be transferred, assigned, partitioned, disaggregated, or leased on a long term basis to an entity that was not qualified to bid on that reserved spectrum license at the time of the Incentive Auction short-form application deadline.

The *Report and Order* also sets forth rules to attribute interests in determining spectrum holdings for purposes of calculating a party's relevant spectrum holding amounts before competitive bidding and for purposes of applying the initial spectrum screen to secondary market transactions.

III. RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS

The purpose of the spectrum screen threshold is to help identify those markets that provide particular reason for further competitive analysis, in connection with the Commission's consideration of a request for approval of a transaction involving spectrum authorizations or approval of a license application. While the *Report and Order* focuses on this aspect of the Commission's consideration of such requests, the Commission has not limited its consideration of potential competitive harms solely to markets identified by its initial screen. As set out in various transactions orders, the Commission will also consider other factors that may bear on the public interest inquiry, and, as noted above, the Commission will consider additional below-1-GHz spectrum concentration as an enhanced factor in reviewing such transactions. In addition, an applicant for bidding on reserved licenses in the Incentive Auction must comply with the qualifications, as noted above. (*See* 47 C.F.R. § 20.22(c)(1)). Further, an applicant for approval of a transaction involving 600 MHz Band licenses must comply with the secondary market restrictions for such licenses, as noted above. (*See* 47 C.F.R. § 20.22(c)(2) & (3)). More generally, an applicant for approval of a transaction or for grant of an initial license is required to comply with the

general application processes specified in the applicable FCC Forms and Part 1 of the Commission's rules (47 C.F.R. Part 1), as well as with any additional requirements specific to the given service (*See, e.g.*, 47 C.F.R. Parts 20, 24 and 27).

IV. WEBLINK

A copy of the *Report and Order* is available at <http://www.fcc.gov/document/mobile-spectrum-holdings-report-and-order>.